

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

RODNEY O'NEIL SIMMONS,)	
)	
Petitioner,)	
)	1:05CV00368
v.)	4:97CR140-1
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

O-R-D-E-R

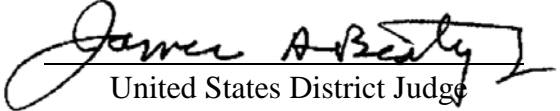
On April 26, 2005, in accordance with 28 U.S.C. § 636(b), the Recommendation of the United States Magistrate Judge was filed and notice was served on the parties in this action and a copy was given to the court.

Within the time limitation set forth in the statute, Petitioner objected to the Recommendation.

The court has appropriately reviewed the portions of the Magistrate Judge's report to which objection was made and has made a de novo determination which is in accord with the Magistrate Judge's report. The court therefore adopts the Magistrate Judge's recommendation.

IT IS THEREFORE ORDERED that Petitioner's "memorandum of law in support of the wardens direction" [Pleading No. 2] be construed as an attempt by Petitioner to file a second or successive motion to vacate, set aside or correct sentence, and that the motion

to vacate be dismissed without prejudice due to Petitioner's failure to obtain certification from the Fourth Circuit as required by 28 U.S.C. §§ 2244 and 2255 and the Fourth Circuit Local Rule 22(d). A judgment dismissing this action will be entered contemporaneously with this Order.


United States District Judge

Date: June 16, 2005